

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**JENNIFER CAROL WEBB and
KATELYN MARIE WEBB,**
Plaintiffs,

v.

**TRAVES CHARLES WRIGHT, and
NITROGEN SOLUTIONS, LLC,**
Defendants.

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CIVIL ACTION NO.: 6:21-cv-00469

DEFENDANTS' NOTICE OF REMOVAL

Defendants Traves Charles Wright and Nitrogen Solutions, LLC, ("Defendants"), by and through their undersigned counsel, pursuant to the provisions of 28 U.S.C. §§ 1332, 1441 and 1446, hereby remove this action from the 169th Civil District Court in and for Bell County, Texas, to this Court, and state the following in support:

1. Defendants remove this action pursuant to 28 U.S.C. §§ 1441(a) and (b).
2. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the requirements for complete diversity of citizenship and the jurisdictional amount in controversy are satisfied.
3. On October 22, 2020, Plaintiff commenced this action in the 169th Civil District Court in and for Bell County, Texas, Cause Number 320,591-C. A true and correct copy of the Citation and Petition, as well as all process, pleadings and orders filed by any party in such action as of the date of this Notice of Removal of Action, are attached hereto and incorporated by reference herein as Appendix 1 – 84 ["Appx."]. See 28 U.S.C. § 1446(a).

4. Plaintiff caused a copy of the Citation and Petition to be served on Defendant Nitrogen Solutions, LLC via process server on November 4, 2020. See Appx. 52 - 53.
5. Plaintiff caused a copy of the Citation and Petition to be served on Defendant Traves Charles Wright via process server on November 6, 2020. See Appx. 54 - 55.
6. Plaintiff caused a copy of the Citation and Petition to be served on Defendant GEICO County Mutual Insurance Company via process server on October 31, 2020. See Appx. 56.
7. Per the allegations in the Plaintiffs' Original Petition, GEICO County Mutual Insurance Company is a domestic (Texas) insurance company doing business in the State of Texas. See Petition at ¶ 2.8 [Appx. 11]
8. Pursuant to 28 U.S.C. § 1446(b)(3), a Notice of Removal is timely filed if it is filed within 30 days of receipt of "an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." *Id.*; See *OJB, Inc. v. Dowell, Div. of Dow Chemical Co.*, 650 F. Supp. 42, 1986 U.S. Dist. LEXIS 17714 (N.D. Tex. 1986) (voluntary dismissal of non-diverse defendant makes case removable and begins time for such action). Defendant's filing is within 30 days of the Notice of Nonsuit of GEICO County Mutual Insurance Company [Appx. 81 - 82] and is thus timely filed pursuant to 28 U.S.C. § 1446(b)(3).
9. Removal of this action to the United States District Court for the Western District of Texas, Waco Division, is proper pursuant to 28 U.S.C. § 1441(a) because this District encompasses the 169th Civil District Court in and for Bell County, Texas, the forum in which this action is pending.
10. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332(a)(1) because it is a civil action between citizens of different states, and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

11. Plaintiffs are both citizens of Texas with their principal address located at 304 Chrislyn Drive, Troy, Texas 76579. Petition at ¶ 2.2, Appx. 10.

12. Plaintiffs concede that Defendant Nitrogen Solutions, LLC is an Arkansas limited liability company with its principal place of business located at 1506 Lamar Place, Jonesboro, AR 72401 and that Defendant Traves Charles Wright is a citizen of Idaho with his principal address located at 113 East 2nd Ave., Post Falls, Idaho, 83854. Petition at ¶¶ 2.5 and 2.6, Appx. 10. Nitrogen Solutions, LLC, has two members: John W McCaughey and Matthew L McCaughey, both of whom reside in the City of Weatherford, Custer County, Oklahoma. 28 U.S.C. § 1332(c)(1). Accordingly, Defendant Nitrogen Solutions, LLC is a citizen of Oklahoma and Defendant Traves Charles Wright is a citizen of Idaho. 28 U.S.C. § 1332(c)(1); *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008) (“citizenship of LLC is determined by the citizenship of all of its members”). For the reasons set forth above, none of the Plaintiffs are citizens of Oklahoma or Idaho, creating complete diversity between the Plaintiffs and the Defendants in this case and making removal proper pursuant to 28 U.S.C. § 1441(b).

13. The amount in controversy is anticipated to exceed the jurisdictional amount of \$75,000. See Petition at ¶ 1.4, Appx. 10.

14. Plaintiffs specifically seek an award in the amount of "over \$1,000,000.00" against Defendants for damages based on purported negligence and/or negligence per se relating to a motor vehicle accident that occurred on or about March 13, 2019. Id. at ¶¶ 1.4; 5.1-5.4; 6.1-6.4, Appx. 10; 12 -13.

15. Plaintiff further seeks an award of punitive damages, which is also to be included in calculating the amount in controversy. See Petition at ¶ 10.1, Appx. 19; Watson v. Shell Oil Co., 979 F.2d 1014, 1021 (5th Cir. 1992), on reh'g, 53 F.3d 663 (5th Cir. 1994).

16. While Defendants deny that Plaintiffs' claims have any merit, in measuring the amount in controversy, a court must assume that the allegations of the petition are true and assume that a jury will return a verdict for the plaintiff on all claims made in the petition.

17. Given Plaintiffs' claims for damages, the amount in controversy in this case exceeds \$75,000. See St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288 (1938); see also Payne v. State Farm Mut. Auto. Ins. Co., 266 F.2d 63, 64 (5th Cir. 1959) ("The sum a plaintiff claims usually controls the jurisdictional amount.") This Court, therefore, has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1).

18. In accordance with 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be filed with the 169th Civil District Court in and for Bell County, Texas, and served upon Plaintiffs.

19. Pursuant to Local Rule CV-3(a), Defendants submit the following information:

- (a) A completed civil cover sheet.
- (b) There are no matters, or related cases, currently pending in the state court that require resolution by this Court, other than the underlying case.

WHEREFORE, Defendant gives notice that the above-captioned action is removed to the United States District Court for the Western District of Texas, and further proceedings in the above-captioned action in the 169th Civil District Court in and for Bell County, Texas should be discontinued.

DATED: May 5, 2020

Respectfully submitted,

/s/David L. Ortega
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**ATTORNEY FOR DEFENDANTS
TRAVES CHARLES WRIGHT AND
NITROGEN SOLUTIONS, LLC**

CERTIFICATE OF SERVICE

This is to certify that on this 5th day of May, 2021, a true and correct copy of the above and foregoing was served as follows:

Via E-Filing

Jennifer L. Mathis
Daniel Stark, P.C.
P.O. Box 1153
Bryan, Texas 77806

/s/David L. Ortega
David L. Ortega